

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

76-7441

In The
UNITED STATES COURT OF APPEALS
For The Second Circuit

Civil Docket No. 75-107
U. S. Court of Appeals Docket No. 76-7441

MARIA VALENTINO

VS.
SWISS FONDUE POT, INC.

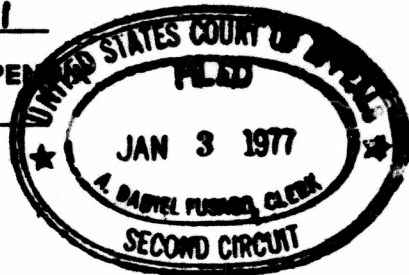
Appellee

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF VERMONT

1
JOINT-APPENDIX

JOHN C. GRAVEL
Attorney for
Plaintiff-Appellee,
Gravel, Shea & Wright
109 South Winooski Avenue
Burlington, Vermont



W. EDSON McKEE,
Attorney for Defendant-Appellant,
McKee, Giuliani & Cleveland
94 Main Street
Montpelier, Vermont

PAGINATION AS IN ORIGINAL COPY

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

Civil No. 75-107

MARIA VALENTINO
vs.
SWISS FONDUE POT, INC.

RELEVANT DOCKET ENTRIES

1975

April 29 Filed Complaint
June 2 Defendant's Answer
June 6 Amendment to Answer Filed

1976

June 3 Judgment Order
**June 9 Defendant's motion for judgment notwithstanding
verdict and alternatively, motion for new trial.
Motion for judgment notwithstanding verdict.**
**July 26 Defendant's motion for judgment notwithstanding
verdict and alternatively, motion for new trial
withdrawn.**
**Hearing on motion for judgment notwithstanding
verdict and denied.**
August 13 Notice of Appeal

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

MARIA VALENTINO

Plaintiff,

vs.

CIVIL ACTION

FILE NO. 75-107

SWISS FONDUE POT, INC.

Defendant.

S U M M O N S

TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned and required to serve upon the firm of Gravel, Shea & Wright, Plaintiff's attorney, whose address is 109 South Winooski Avenue, Burlington, Vermont, and answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, Judgment by Default will be taken against you for the relief demanded in the Complaint.

EDWARD J. TRUDELL

Clerk of Court

By: Leonard W. Lafayette

Chief Deputy Clerk

**DATE: April 29, 1975
Burlington, Vermont**

**NOTE: This Summons is issued
pursuant to Rule 4 of the
Federal Rules of Civil
Procedure.**

C O M P L A I N T

(1) Plaintiff is a citizen of Canada, residing in the City of Montreal and Province of Quebec.

(2) Defendant is a corporation organized and existing under the laws of the State of Vermont and having its registered office at 192 College Street, Burlington, Vermont.

(3) The amount in controversy, exclusive of interest and cost exceeds \$10,000.00.

(4) That on or about July 22, 1974, and thereafter, Defendant was the owner and operator of the Swiss Chocolate Pot Restaurant located in Stowe, Vermont.

(5) That on or about July 22, 1974, Plaintiff was a business invitee of the Defendant at said Swiss Chocolate Pot Restaurant located in Stowe, Vermont.

(6) That on or about July 22, 1974, Defendant did fail to maintain the premises of the said Swiss Chocolate Pot Restaurant located in Stowe, Vermont, in a safe and business-like manner, and Defendant did fail to properly warn Plaintiff of a certain unlighted, single, step up located on Defendant's premises.

(7) That, because of Defendant's negligence in failing to properly maintain its premises and in failing to properly warn Plaintiff of a danger to her person located within said Swiss Chocolate Pot Restaurant, Plaintiff did fall and thereby become severely injured.

(8) As a proximate consequence of the negligence of the Defendant, Plaintiff suffered serious and permanent injuries of mind and body, including a fracture of her left hip, bruises to other parts of her body and to her nervous system. Plaintiff required medical care and treatment and will require medical care and treatment in the future. Plaintiff suffered pain and discomfort and will have pain and discomfort in the future. Plaintiff incurred expenses from medical care and treatment and will be required to incur further expenses for medical care and treatment in the future. Plaintiff was unable to work and to carry on her normal activities and will be unable to work and carry on her normal activities in the future. Plaintiff has had to hire a housekeeper and has incurred other necessary expenses and Plaintiff continues to require the services of a housekeeper and will incur other necessary expenses in the future.

WHEREFORE, Plaintiff demands judgment against the Defendant in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) together with interest and costs.

GRAVEL, SHEA & WRIGHT
Attorneys for Plaintiff
By JOHN C. GRAVEL

DATED April 28, 1975

Plaintiff demands a trial by jury.

GRAVEL, SHEA & WRIGHT
DATED April 28, 1975 By JOHN C. GRAVEL

ANSWER

NOW COMES defendant Swiss Fondue Pot, Inc., by and through its attorneys, McKee, Clewley & FitzPatrick, and answers Plaintiff's Complaint as follows:

(1) The defendant admits the allegations set forth in Paragraph 1 through 5, except that the alleged accident may have occurred on July 21, 1974.

(2) The defendant denies the allegations set forth in Paragraph 6.

(3) The defendant denies the allegations set forth in Paragraph 7.

(4) The defendant has no knowledge of the allegations set forth in Paragraph 8, and accordingly, denies it and puts the plaintiff to her proof.

AFFIRMATIVE DEFENSE

That the plaintiff was contributorily negligent and her negligence exceeded any negligence that could be found on the part of the defendant by more than 51 percent.

McKEE, CLEWLEY & FITZPATRICK

By /s/ W. Edson McKee

W. Edson McKee, Esquire

Drawer F, Montpelier, Vermont 05602

Dated: June 2, 1975

CERTIFICATE OF SERVICE

I, W. Edson McKee, Esq., attorney for defendant Swiss Fondue Pot, Inc., hereby certify that I served a copy of the within Answer on John C. Gravel, Esq., attorney for plaintiff, by mailing to him a copy of the same, postage prepaid, at his address at 109 South Winooski Avenue, Burlington, Vermont 05401, this 2nd day of June, 1975.

/s/ W. Edson McKee
W. Edson McKee, Esquire

AMENDMENT TO ANSWER

NOW COMES defendant by and through its attorneys, McKee, Clewley & FitzPatrick, and amends its Answer to include the affirmative defense of assumption of the risk on the part of the plaintiff.

McKEE, CLEWLEY & FITZPATRICK

By /s/ W. Edson McKee

W. Edson McKee, Esquire

Drawer F, Montpelier, Vermont 05602

Dated: June 6, 1975

CERTIFICATE OF SERVICE

I, W. Edson McKee, Esq., attorney for defendant, hereby certify that I served a copy of the within Amendment to Answer on John C. Gravel, Esq., attorney for plaintiff, by mailing him a copy of the same, postage prepaid, at his address at 109 South Winooski Avenue, Burlington, Vermont 05401, this 6th day of June, 1975.

/s/ W. Edson McKee

W. Edson McKee, Esquire

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Albert W. Coffrin, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged that Judgment is hereby entered on the verdict of the Jury for the plaintiff to recover from the defendant Eighty Seven Thousand Five Hundred Dollars (\$87,500.00) damages.

Dated at Burlington, in the District of Vermont, this 3rd day of June, 1976.

ENDORSED: Filed June 3, 1976

EDWARD J. TRUDELL
Clerk of Court

Germaine R. Curran
Deputy Clerk

By: Germaine R. Curran
Deputy Clerk

MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT AND ALTERNATIVELY, MOTION FOR NEW TRIAL

Defendant, having at the close of testimony, moved the Court to direct a verdict in its favor, which motion was denied, and thereafter, a verdict having been returned by the jury in favor of plaintiff, moves that judgment be entered in favor of defendant, notwithstanding the verdict, on the following grounds:

(1) That the plaintiff through testimony failed to show what, if anything was the proximate cause of her falling.

(2) That on the state of the evidence that existed, the submission of the case to the jury was an invitation to the jury to speculate on the cause or causes of plaintiff's injuries.

In the event its Motion for Judgment Notwithstanding the Verdict is denied, defendant will move the Court for a new trial upon the following grounds:

(1) That the trial court erred in denying defendant's Motion for Directed Verdict at the close of plaintiff's case in that the evidence failed to show what, if any, active negligence on the part of defendant was the proximate cause of plaintiff's injuries.

Dated this 9th day of June, 1976.

Robert W. Gagnon, Esq.

McKee, Giuliani & Cleveland

Drawer F, Montpelier, Vermont 05602

CERTIFICATE OF SERVICE

I, Robert W. Gagnon, Esq., attorney for defendant, Swiss Fondue Pot, Inc., hereby certify that I served a copy of the foregoing Motion for Judgment Notwithstanding Verdict and alternatively, Motion for New Trial on John C. Gravel, Esq., attorney for plaintiff, by mailing to him a copy of the same, postage prepaid, at his address at 109 Winooski Avenue, Burlington, Vermont 05401, this — of June, 1976.

Robert W. Gagnon, Esq.

MOTION FOR JUDGMENT NOTWITHSTANDING VERDICT

Defendant, having at the close of testimony, moved the Court to direct a verdict in its favor, which motion was denied, and thereafter, a verdict having been returned by the jury in favor of plaintiff, now moves that a judgment be entered in favor of defendant, notwithstanding the verdict, on the following grounds:

(1) That the plaintiff through testimony failed to show what, if anything, was the proximate cause of her falling.

(2) That on the state of the evidence that existed, the submission of the case to the jury was an invitation to the jury to speculate on the cause or causes of plaintiff's injuries.

Dated this 9th day of June, 1976.

Robert W. Gagnon, Esq.
McKee, Giuliani & Cleveland
Drawer F, Montpelier, Vermont 05602

CERTIFICATE OF SERVICE

I, Robert W. Gagnon, Esq., attorney for defendant, Swiss Fondue Pot, Inc., hereby certify that I served a copy of the foregoing Motion for Judgment Notwithstanding Verdict on John C. Gravel, Esq., attorney for plaintiff, by mailing to him a copy of the same, postage prepaid, at his address at 109 South Winooski Avenue, Burlington, Vermont 05401, this 9th day of June, 1976.

Robert W. Gagnon, Esq.

TICE OF APPEAL

Notice is ~~here~~ given that Swiss Fondue Pot, Inc., Defendant above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Final Judgment entered in this action on the 26th day of July, 1976.

Dated this 13th day of August, 1976, at Montpelier, County of Washington and State of Vermont

SWISS FONDUE POT, INC.

By W. Edson McKee,
Attorney for Defendant
McKee, Giuliani & Cleveland
Drawer F, Montpelier, Vt. 05602

CERTIFICATE OF SERVICE

I, W. Edson McKee, attorney for defendant, Swiss Fondue Pot, Inc. hereby certify that I served a copy of the foregoing Notice of Appeal on John C. Gravel, Esq., attorney for plaintiff, by mailing him a copy of the same, postage prepaid, at this address at 109 South Winooski Avenue, Burlington, Vt. 05401, this 13th day of August, 1976.

W. Edson McKee, Esq.

McKEE, GIULIANI & CLEVELAND

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

P. O. Box F

MONTPELIER, VERMONT 05602

TELEPHONE (802) 223-3479

W. EDSON MCKEE
J. PAUL GIULIANI
FREDERICK G. CLEVELAND
ROBERT W. GAGNON

OFFICES AT:
94 MAIN STREET
MONTPELIER, VT.

October 27, 1976

cc 10/28
FTS -
832-6501

Hon. A. Daniel Fusaro
Clerk, U. S. Court of Appeals
for the Second Circuit
U. S. Courthouse
Foley Square
New York, New York 10007

Dear Mr. Fusaro:

I am enclosing herewith 25 copies of the printed Joint-Appendix with regard to MARIA VALENTINO vs. SWISS FONT 'E POT, INC., U. S. Court of Appeals Docket No. 76-7441.

I am this date mailing 2 copies of same to Attorney John C. Gravel, Gravel, Shea & Wright, attorneys for the plaintiff-appellee.

Very truly yours,



W. Edson McKee

WEM:ph
Enclosures - 25

cc: John C. Gravel, Esquire